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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,369	01/31/2002	Stephen S. Breese	AUS920011024US1	2912
50170	7590	03/15/2006	EXAMINER	
IBM CORP. (WIP)			POLLACK, MELVIN H	
c/o WALDER INTELLECTUAL PROPERTY LAW, P.C.			ART UNIT	
P.O. BOX 832745			PAPER NUMBER	
RICHARDSON, TX 75083			2145	

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/062,369

Applicant(s)

BREESE ET AL

Examiner

Melvin H. Pollack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12, 13, 15-24, 26, 27, 29-39, 41, 42, 44-54, 56, 57 and 59-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12, 13, 15-24, 26, 27, 29-39, 41, 42, 44-54, 56, 57 and 59-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/17/05, 12/23/05</u> | 6) <input checked="" type="checkbox"/> Other: <u>see attached office action</u>         |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-10, 12, 13, 15-24, 26, 27, 29-39, 41, 42, 44-54, 56, 57, and 59-64 have been considered but are moot in view of the new ground(s) of rejection.
2. In the response to the last office action, the applicant changed the scope of the claims by adding configuration, scripting, and reporting per transaction step to all independent claims. The applicant has also added several new claims. The examiner has determined that the change in scope is materially sufficient to necessitate search and consideration of the added limitations and/or clarifications. As a result, a final amendment is necessitated even if the examiner provides a new art rejection. The examiner acknowledges that no new matter has been added by this amendment.
3. The 112 rejections are withdrawn in light of the amendment.
4. The original art rejections have been modified, with new art added which teach the new limitations.
5. The examiner notes that the locations of the local probe and remote probe have been drawn broadly, and will be read as such.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-7, 9, 12, 16, 17, 19-21, 23, 26, 29, 30, 32-36, 38, 41, 45, 47-51, 53, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hershey et al. (5,793,753) in view of Chandra et al. (6,397,359).

8. For claims 1, 30, 45, Hershey teach a method (abstract) for communicating performance information (col. 1, line 1 – col. 2, line 55), said method comprising:

- a. Configuring a plurality of probes (col. 3, lines 28 – 60) to monitor activities between a client computing device and a server computing device (col. 4, lines 30-44);
- b. Collecting data from the plurality of probes (col. 4, lines 44-60), including at least one local probe and at least one remote probe (Fig. 2; col. 3, lines 10-50); and
- c. Reporting said data (col. 2, lines 50-55), wherein reporting said data comprises generating a report regarding transaction activities (col. 5, lines 30-40).

9. Hershey does not expressly disclose configuring a plurality of probes to execute a script for performing a transaction, wherein the script comprises a plurality of transaction steps for performing the transaction. Hershey does not expressly disclose that the collected data is data representative of a performance of the transaction steps of the script executed by the plurality of probes, nor that the report comprises a plurality of transaction step entries, one entry for each transaction step of the script, having associated performance data collected from one or more of the at least one local probe or the at least one remote probe. Chandra teaches a method and system (abstract) of performance monitoring and network testing (col. 1, line 1 – col. 5, line 30) between local and remote nodes (col. 6, line 29 – col. 7, line 15), wherein test scripts are developed and sent to each node (col. 7, line 15 – col. 8, line 22), and wherein data is collected (col. 8, lines 22-35) and stored (col. 10, lines 60-61), to be reported (col. 13, lines 10-11) in

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association with specific script commands (col. 16, line 20 - col. 18, line 35), broken by local and remote views (col. 3, lines 45-47). At the time the invention was made, one of ordinary skill in the art would have added Chandra script and reporting methods to Hershey to improve the monitoring process by allowing for new or custom applications (col. 1, line 54 – col. 2, line 10).

10. For claims 3, 32, 47, Hershey teaches that said reporting further comprises outputting a plurality of items chosen from: response time data, availability data, probe location, Internet Service Provider information, time of script execution, threshold values, service level agreement violations, and error messages (col. 4, lines 44-60).

11. For claims 4, 16, 17, 33, 48, Hershey does not expressly disclose comparing said data with at least one threshold value derived from a service level agreement, and reporting results of said comparing. Chandra teaches service level agreement monitoring (col. 14, line 39 – col. 15, line 16). At the time the invention was made, one of ordinary skill in the art would have combined the inventions for the reasons above and in order to provide analysis independent of certain factors (col. 14, lines 63-67).

12. For claims 5, 19, 34, 49, Hershey teaches providing an alert when said data indicates an error (Fig. 4, #47; col. 5, lines 55-60).

13. For claims 6, 20, 35, 50, Hershey teaches that said error is a measured response time value greater than a corresponding threshold value (col. 3, line 60 – col. 4, line 9).

14. For claims 7, 21, 36, 51, Hershey teaches that said alert is provided via a system management computer (col. 3, lines 50-60; col. 4, lines 10-20).

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15. For claims 9, 23, 38, 53, Hershey teaches outputting in a special mode any measured response time value that is greater than the corresponding threshold value (col. 3, line 65 – col. 4, line 1; “appropriate display”).

16. Claims 26 and 29 are drawn to the limitations in claims 4 and 9. Therefore, since claims 4 and 9 are rejected, claims 26 and 29 are also rejected for the reasons above.

17. For claims 12, 41, 56, Hershey teaches outputting in a special mode an indication of an application’s lack of availability (col. 4, lines 49-50; alarm condition = loss of signal).

18. Claims 2, 8, 10, 13, 15, 18, 22, 24, 27, 31, 37, 39, 42, 44, 46, 52, 54, 57, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hershey and Chandra as applied to claims 1, 16, 30, 45 above, and further in view of Schwaller et al. (6,901,442).

19. For claims 2, 18, 31, 46, Hershey teaches that said reporting further comprises reporting a first subset of said data that originates from said at least one local probe (Fig. 2, #22a), and reporting a second subset of said data that originates from said at least one remote probe (Fig. 2, #22b). Hershey and Chandra do not expressly disclose employing a similar reporting format for said first subset and said second subset, whereby comparison of said first subset and said second subset is facilitated. Schwaller teaches a method (abstract) of monitoring network nodes and reporting performance data (col. 1, line 1 – col. Col. 6, line 20) in which the reporting method employs a similar reporting format for said first subset and said second subset (Fig. 9B), whereby comparison of said first subset and said second subset is facilitated (col. 14, lines 5-20). At the time the invention was made, one of ordinary skill in the art would have used Schwaller’s

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GUI to improve reporting methods and further to allow administrators to better study data and locate problems (col. 15, lines 20-55).

20. For claims 8, 22, 37, 52, Hershey and Chandra do not expressly disclose providing a clearing message when said error no longer is detected. Schwaller teaches the negation of error messages when trend measurements indicate improvement for the error message (col. 20, lines 35-45). At the time the invention was made, one of ordinary skill in the art would have added the clearing of error messages to Hershey and Chandra so that administrators may know which problems require attention (col. 17, lines 30-35).

21. For claims 10, 13, 24, 27, 39, 42, 54, 57, Hershey and Chandra do not expressly disclose that outputting in a special mode further comprises outputting in a special color. Schwaller teaches this limitation (col. 13, lines 55-65). At the time the invention was made, one of ordinary skill in the art would have added color coding to make error determination easier for administrators (col. 3, lines 3-5).

22. For claims 15, 44, 59, Hershey does not expressly disclose reporting results of each execution of the script by said plurality of probes, but does teach that the probes are programmable as to monitoring of the system (col. 5, lines 10-40). Schwaller teaches the reporting of test script results (col. 9, lines 30-50). At the time the invention was made, one of ordinary skill in the art would have added scripting in order to perform traffic simulation (col. 7, line 55 – col. 8, line 50) that is well known in legacy systems (col. 2, lines 20-35).

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23. Claims 60-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hershey, Chandra, and Schwaller as applied to claims 15, 16, 26, 44, and 59 above, and further in view of Wlaschin et al. (6,163,775).

24. For claims 60-64, Hershey teaches outputting the reported results to a user (col. 5, lines 30-40), but does not expressly disclose the output of the report comprises a table. Chandra teaches a table report (Tables 3 and 4), but does not expressly disclose a table having at least one row for each execution of the script and columns ordered according to an order of transaction steps in the script. Wlaschin teaches a method and system (abstract) of utilizing tables to report data (col. 1, line 1 – col. 3, line 30), wherein a structure of such type is utilized (col. 6, line 35 – col. 7, line 30) to store data of any type (abstract).

25. The remaining differences are only found in the non-functional data stored on the article of manufacture. Monitoring data and specific labels is not functionally related to the substrate of the article of manufacture. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see Cf. In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

26. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to store any data in the fields of the article of manufacture as shown in Wlaschin because such data does not functionally relate to the substrate of the article of manufacture and merely labeling the data differently from that in the prior art would have been obvious matter of design choice. *See In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975).



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27. At the time the invention was made, one of ordinary skill in the art would have used Wlaschin to order the data from Hershey and Chandra in order to improve functionality such as results searching (col. 1, line 66 – col. 2, line 10).

***Conclusion***

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They regard further teachings of hierarchical probe data gathering, and of reporting based on transaction steps and/or timestamps.

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H. Pollack whose telephone number is (571) 272-3887. The examiner can normally be reached on 8:00-4:30 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MHP

02 March 2006

  
JASON CARDONE  
SUPERVISORY PATENT EXAMINER